

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONUNITED STATES OF AMERICA,
Plaintiff,

v.

JOAQUIN BASURTO-ESPINO,
Defendant.

NO. CR-09-2046-EFS

**ORDER DENYING MOTION TO AMEND
PURSUANT TO COURT'S ORDER**

Before the Court, without oral argument, is Defendant Joaquin Basurto-Espino's Motion to Amend Pursuant to Courts [sic] Order (ECF No. [65](#)), filed March 14, 2011. Mr. Basurto-Espino asks the Court to construe his previously-filed Motion for Relief Pursuant to F. R. Civ. P. 60(b)(1) and (6) (ECF No. [63](#)) as one pursuant to 28 U.S.C. § 2255. The Court in its Orders (ECF Nos. 61 & 64) denied the relief Mr. Basurto-Espino previously requested and indicated to him that he must clearly decide whether he wanted to file a § 2255 petition for writ of habeas corpus. To the extent that any language in those Orders may have misled Mr. Basurto-Espino into believing that the Court would simply construe those motions as meeting the requirements of § 2255 and the Rules Governing Section 2255 Proceedings, it was not the Court's intention to do so. The

1 requirements of that statute and those rules are clear and the Court will
2 not shortcut them.

3 After fully considering the instant motion (ECF No. [65](#)), the Court
4 declines to construe the Motion for Relief Pursuant to F. R. Civ. P.
5 60(b)(1) and (6) (ECF No. [63](#)) as a petition for writ of habeas corpus
6 under § 2255 because Mr. Basurto-Espino's instant motion to amend fails
7 to follow the requirements of the Rules Governing Section 2255
8 Proceedings for the United States District Courts. None of those
9 requirements have been met by any of Mr. Basurto-Espino's filings to
10 date. It appears that Mr. Basurto-Espino has time to file a § 2255
11 petition that meets the pleading requirements of those rules. See 28
12 U.S.C. § 2255(f) (setting a one-year statute of limitations); (ECF No.
13 [64](#)).

14 Accordingly, **IT IS HEREBY ORDERED:** Defendant Joaquin Basurto-
15 Espino's Motion to Amend Pursuant to Courts [sic] Order (ECF No. [65](#)) is
16 **DENIED.**

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter
18 this Order and provide a copy to Defendant and the United States
19 Attorney's Office.

20 **DATED** this 11th day of April 2011.

21
22 S/ Edward F. Shea
23 EDWARD F. SHEA
24 United States District Judge
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